IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL APPLICATION NO.315 OF 2007

Mr.Ravi Gaikwad ...Applicant.
V/s.
The State of Maharashtra ...Respondent.

Mr.Shirish Gupe, the learned Senior Counsel i/b
M.V.Kini & Co. for the Applicant.
Mr.U.V.Nikam, APP for the Respondent/State.

CORAM: J.H.BHATIA, J.
DATE : 13th February, 2007.

P.C.:

1. Heard Mr.Shirish Gupte, the learned senior counsel for the applicant and Mr.U.V.Nikam, the learned APP for the State.

2. The applicant who was employed on the contract basis as a recovery officer seeks anticipatory bail in Crime No.16 of 2007 registered at Sarkar Wada Police Station, Nashik for the offence punishable under Section 304 read with Section 34 of the I.P.C.

3. Prosecution case in brief is that the deceased Suresh Rangnath Chaudhary had taken housing loan from ICICI Bank in the year 2003 and he was also paying instalments. However, some instalments had become overdue and therefore, the bank filed a suit for

recovery of the amount and also filed proceeding under Section 138 of the Negotiable Instruments Act. According to the prosecution on 13-1-2007 at about noon time, accused Nilesh Pagar, an employee of the bank on contract basis, had been to the house of Suresh and told him that he was called to the bank by the present applicant Ravi. Saying so, he took suresh to the bank. For about 3 hours or so, he was with the present applicant and other two accused. At about 3.30 p.m. the present applicant telephonically informed son of the Suresh that his father was sick, had urinated and vomited. Within short time, he died in the bank itself. From there, he was taken to Civil Hospital, Nashik in dead condition. Post mortem was conducted. As per the report lodged by son of the deceased, the accused persons had acted in most inhumane manner and had tortured his father mentally and due to same, he had suffered and finally died. The offence under Section 304 read with Section 34 of the I.P.C. came to be registered.

4. P.M.Report reveals that there was no physical external injury on the body of Suresh as well as no internal injury was found. Autopsy surgeon opined that cause of death was Myocordial infraction indicating that he might be suffering from some heart ailments and he

died in the bank. The learned Senior counsel for the applicant pointed out that there was no physical act done by any of the accused nor any external or internal injury was caused by any of the accused and therefore, the offence of culpable homicide under section 299 of the I.P.C. is not made out.

5. There appears a substance in his contention that there is a possibility that the deceased Suresh might be having some heart ailment prior to the incident and it was aggravated because of the pressure tactics adopted by the musclemen of the bank. In fact, he had taken home loan of just Rs.1,81,000/- in the year 2000 and he had paid some instalments regularly till 2003. Thereafter, due to some financial difficulty he could not pay instalments. Due to this, the bank had filed civil suit as well as proceeding under section 138 of the Negotiable Instruments Act. The learned senior counsel Mr.Gupte pointed out that on 8th January, 2007 he had also executed possession receipt in favour of the bank and thus, recovery of dues of the bank was assured. In such circumstances, there could be no justification for the bank officers to call him with the help of musclemen in the bank and to mentally torture and pressurise him any more. This approach of the bank and its officers itself is certainly deplorable and has to

be deprecated. However, at the same time, we have to keep in mind that when no physical injury was caused to the deceased, there is a question on the applicability of Sections 299 and 304 of the I.P.C. itself. It appears that the police want to seize certain documents from the bank. That purpose can be served if the applicant is made available for the interrogation. Custodial interrogation will not be necessary in the matter.

5. In the above circumstances, in the case of arrest in Crime No.16 of 2007 the applicant shall be released on his executing P.R.Bond of Rs.15,000/- with surety in the like amount. He shall make himself available as and when required by the police for interrogation and shall fully co-operate with the investigation. Bank officers shall produce all relevant documents, as may be required by the Investigation Officer.

6. The Application stands disposed off.

(J.H.Bhatia,J.)